

AG Contract No : KR04-1388TRN
ADOT ECS File No : JPA 04-091
TRACS: H5955 06 D
Project No : STP 085-B(006)
Section:SR 85 Milepost 142 45-147.41
Budget Source Item No : 10805

**AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE ARIZONA OPEN LAND TRUST**

THIS AGREEMENT is entered into this date 10 November of 2004, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the ARIZONA OPEN LAND TRUST, acting by and through its Board of Directors, (the "AOLT").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The AOLT is empowered by its Board of Directors to enter into this Agreement and has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the AOLT.

3. The State is contemplating two roadway improvement projects on State Route 85, east of Gila Bend, Arizona to convert from a two-lane to a four-lane divided highway with an open median between the northbound and southbound traffic. These improvements will impact approximately 4 988 acres of jurisdictional waters. The Corps of Engineers has determined, under Section 404 of the Clean Water Act (33 U.S.C. 1344) that the State transfer a one time in-lieu mitigation fee to the Arizona Open Land Trust (AOLT) to continue landscape restoration efforts with landowners and provide alternative water sources to improve riparian habitat on the West Branch of the Santa Cruz River. A one-time fee payment by the State in the amount of \$12,600.00 for Project 6 and an amount of \$12,340.00 for Project 8, for the total cost of the mitigation.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27211
Filed with the Secretary of State
Date Filed: 11/10/04

Janice K. Brewer
Secretary of State

By: Dwight D. Haenebold

II. SCOPE OF WORK

1. The AOLT Will:

a. Upon execution of this Agreement, invoice the State for the cost of the mitigation effort, in the amount of \$12,600.00 for Project 6 and an amount of \$12,340.00 for Project 8

b. Dedicate these fee payments and conduct all necessary negotiations to provide alternative water sources to improve riparian habitat on the West Branch of the Santa Cruz River as shown on Exhibit attached hereto and made a part hereof

c. Request for payment shall be submitted with the "ADOT Progress Payment" Report Form (attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 9.

2. The State Will:

a. Upon receipt of and approval of an invoice by AOLT, the State, will remit to AOLT an amount of \$12,600.00 for Project 6 and \$12,340.00 for Project 8 as the total cost of the mitigation effort.

b. Upon execution of this Agreement, ADOT (Environmental Enhancement Group) will provide the Corp of Engineers a copy of the check and transmittal letter that shall serve to demonstrate the successful transfer of the mitigation at the following address: Attention Regulatory Branch (2004-01264-CJL) 3636 North Central Avenue, Suite 900 Phoenix, Arizona 85012-1939.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until final accounting. This Agreement may be cancelled prior to the disbursement of funds transferred under this Agreement, upon thirty-days (30) written notice to either party

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by AOLT for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona shall be responsible for its own negligence. Each party to this Agreement is responsible for its own negligence.

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007 FAX (602) 712-7424

The Arizona Open Land Trust
Executive Director
1915 E Camino Miravel
Tucson, AZ 85718

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

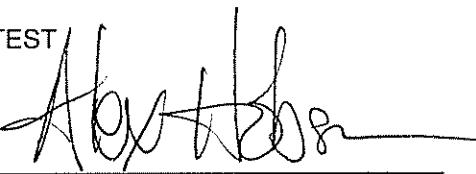
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE ARIZONA OPEN LAND TRUST

STATE OF ARIZONA
Department of Transportation

By 
DIANA BARNES FRESHWATER
Executive Director

By 
SUSAN TELLEZ
Contract Administrator

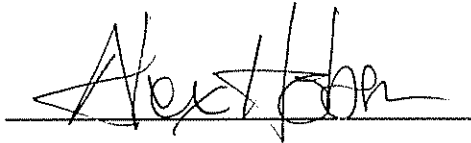
ATTEST

By
ALEX HOBSON
Duffield, Young Adamson, & Alfred, P C

10/26/04
Date

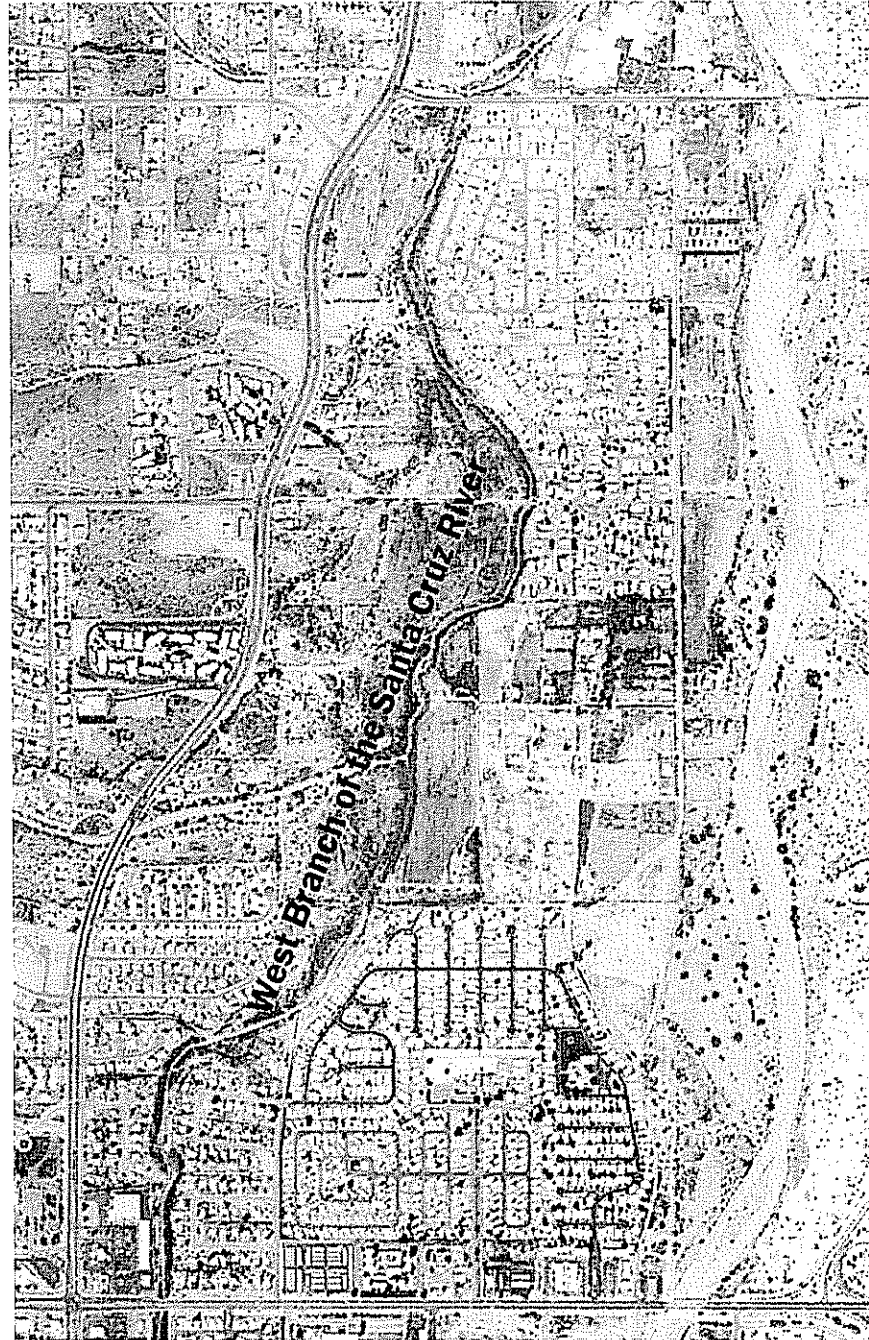
ATTORNEY APPROVAL FORM
FOR THE ARIZONA OPEN LAND TRUST

I, Alex Hobson, am legal counsel for the ARIZONA OPEN LAND TRUST, INC. I have reviewed the above referenced agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the ARIZONA OPEN LAND TRUST, INC , and certify that the ARIZONA OPEN LAND TRUST, INC , by and through authority granted by its Board of Directors delegated to its Executive Director, Diana Barnes Freshwater, has authority to enter in to the said Agreement.

DATED this 20th day of October, 2004.

A handwritten signature in black ink, appearing to read "Alex Hobson", is written over a horizontal line.

Alex Hobson
Duffield, Young, Adamson & Alfred, P C.
3430 East Sunrise Drive, Suite 200
Tucson, Arizona 85718-3210
Legal counsel for the Arizona Open Land Trust, Inc.





OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1388TRN (JPA 04-091), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 3, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section